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MORDECHAI AVISAR

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MORDECHAI AVISAR,
Plaintiff,

vs.

SURGICAL THEATER, INC., a
Delaware Corporation; WEN-CHI
CHEN, an individual; and DOES 1
through 10, inclusive,

Defendants.

SURGICAL THEATER, INC.,
Counter-Claimant,

vs.

MORDECHAI AVISAR,
Counter-Defendant.

CASE NO. 8:23-cv-00211-JWH(ADSx)

STIPULATED PROTECTIVE ORDER

[Discovery Document: Referred to
Magistrate Judge Autumn D. Spaeth]

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 13-C, below, that this Stipulated Protective Order does not entitle them
12 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the Court to file material under seal.

15 **2. GOOD CAUSE STATEMENT**

16 This action is likely to involve trade secrets, customer and pricing lists and
17 other valuable research, development, commercial, financial, technical, and/or
18 proprietary information for which special protection from public disclosure and
19 from use for any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other
21 things, confidential business or financial information, information regarding
22 confidential business practices, or other confidential research, development, or
23 commercial information (including information implicating privacy rights of third
24 parties), information otherwise generally unavailable to the public, or which may
25 be privileged or otherwise protected from disclosure under state or federal statutes,
26 court rules, case decisions, or common law. Accordingly, to expedite the flow of
27 information, to facilitate the prompt resolution of disputes over confidentiality of
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1 discovery materials, to adequately protect information the parties are entitled to
2 keep confidential, to ensure that the parties are permitted reasonable necessary uses
3 of such material in preparation for and in the conduct of trial, to address their
4 handling at the end of the litigation, and serve the ends of justice, a protective order
5 for such information is justified in this matter. It is the intent of the parties that
6 information will not be designated as confidential for tactical reasons and that
7 nothing be so designated without a good-faith belief that it has been maintained in
8 a confidential, non-public manner, and there is good cause why it should not be
9 part of the public record of this case.

10 **3. DEFINITIONS**

- 11 A. Action: This pending federal lawsuit, *Avisar v. Surgical Theater, et*
12 *al.*, and related counterclaim, Case No. 8:23-cv-00211-JWH-ADSx.
- 13 B. Challenging Party: A Party or Non-Party that challenges the
14 designation of information or items under this Order.
- 15 C. “CONFIDENTIAL” Information or Items: Information (regardless of
16 how it is generated, stored, or maintained) or tangible things that
17 qualify for protection under Federal Rule of Civil Procedure 26(c),
18 and as specified above in the Good Cause Statement.
- 19 D. Counsel: Outside Counsel of Record and House Counsel (as well as
20 their support staff).
- 21 E. Designating Party: A Party or Non-Party that designates information
22 or items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”
- 24 F. Disclosure or Discovery Material: All items or information, regardless
25 of the medium or manner in which it is generated, stored, or
26 maintained (including, among other things, testimony, transcripts, and
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1 tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

3 G. Expert: A person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or
5 its counsel to serve as an expert witness or as a consultant in this
6 Action.

7 H. House Counsel: Attorneys who are employees of a party to this
8 Action. House Counsel does not include Outside Counsel of Record
9 or any other outside counsel.

10 I. Non-Party: Any natural person, partnership, corporation, association,
11 or other legal entity not named as a Party to this action.

12 J. Outside Counsel of Record: Attorneys who are not employees of a
13 party to this Action but are retained to represent or advise a party to
14 this Action and have appeared in this Action on behalf of that party or
15 are affiliated with a law firm which has appeared on behalf of that
16 party (and their support staff).

17 K. Party: Any party to this Action, including its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of
19 Record (and their support staff).

20 L. Producing Party: A Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 M. Professional Vendors: Persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating,
24 preparing exhibits or demonstrations, and organizing, storing, or
25 retrieving data in any form or medium) and their employees and
26 subcontractors.

1 N. Protected Material: Any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 O. Receiving Party: A Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 **4. SCOPE**

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or
9 compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material. Any
11 use of Protected Material at trial shall be governed by the orders of the trial judge.
12 This Order does not govern the use of Protected Material at trial.

13 **5. DURATION**

14 Even after final disposition of this litigation, the confidentiality obligations
15 imposed by this Order shall remain in effect until a Designating Party agrees
16 otherwise in writing or a court order otherwise directs. Final disposition shall be
17 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
18 with or without prejudice; and (2) final judgment herein after the completion and
19 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
20 including the time limits for filing any motions or applications for extension of
21 time pursuant to applicable law.

22 **6. DESIGNATING PROTECTED MATERIAL**

23 A. Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection
25 under this Order must take care to limit any such designation to specific material
26 that qualifies under the appropriate standards. The Designating Party must
27 designate for protection only those parts of material, documents, items, or oral or
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1 written communications that qualify so that other portions of the material,
2 documents, items, or communications for which protection is not warranted are not
3 swept unjustifiably within the ambit of this Order.

4 B. Mass, indiscriminate, or routinized designations are prohibited.

5 Designations that are shown to be clearly unjustified or that have been made
6 for an improper purpose (e.g., to unnecessarily encumber the case development
7 process or to impose unnecessary expenses and burdens on other parties) may
8 expose the Designating Party to sanctions. If it comes to a Designating Party's
9 attention that information or items that it designated for protection do not qualify
10 for protection, that Designating Party must promptly notify all other Parties that it
11 is withdrawing the inapplicable designation.

12 C. Manner and Timing of Designations.

13 Except as otherwise provided in this Order, or as otherwise stipulated or
14 ordered, Disclosure or Discovery Material that qualifies for protection under this
15 Order must be clearly so designated before the material is disclosed or produced.
16 Designation in conformity with this Order requires the following:

- 17 1. For information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other
19 pretrial or trial proceedings), that the Producing Party affix at a
20 minimum, the legend "CONFIDENTIAL" (hereinafter
21 "CONFIDENTIAL legend"), to each page that contains
22 protected material. If only a portion or portions of the material
23 on a page qualifies for protection, the Producing Party also
24 must clearly identify the protected portion(s) (e.g., by making
25 appropriate markings in the margins).
- 26 2. A Party or Non-Party that makes original documents available
27 for inspection need not designate them for protection until after
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1 the inspecting Party has indicated which documents it would
2 like copied and produced. During the inspection and before the
3 designation, all the material made available for inspection shall
4 be deemed “CONFIDENTIAL.” After the inspecting Party has
5 identified the documents it wants copied and produced, the
6 Producing Party must determine which documents, or portions
7 thereof, qualify for protection under this Order. Then, before
8 producing the specified documents, the Producing Party must
9 affix the “CONFIDENTIAL” legend to each page that contains
10 Protected Material. If only a portion or portions of the material
11 on a page qualifies for protection, the Producing Party also
12 must clearly identify the protected portion(s) (e.g., by making
13 appropriate markings in the margins).

- 14 3. For testimony given in depositions, that the Designating Party
15 identify the Disclosure or Discovery Material on the record,
16 before the close of the deposition all protected testimony.
- 17 4. For information produced in form other than document and for
18 any other tangible items, that the Producing Party affix in a
19 prominent place on the exterior of the container or containers in
20 which the information is stored the legend “CONFIDENTIAL.”
21 If only a portion or portions of the information warrants
22 protection, the Producing Party, to the extent practicable, shall
23 identify the protected portion(s).

24 D. Inadvertent Failure to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing
26 alone, waive the Designating Party’s right to secure protection under
27 this Order for such material. Upon timely correction of a designation,
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1 the Receiving Party must make reasonable efforts to assure that the
2 material is treated in accordance with the provisions of this Order.

3 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

- 4 A. Any party or Non-Party may challenge a designation of
5 confidentiality at any time that is consistent with the Court's
6 Scheduling Order.
- 7 B. The Challenging Party shall initiate the dispute resolution process
8 under Local Rule 37.1 et seq.
- 9 C. The burden of persuasion in any such challenge proceeding shall be
10 on the Designating Party. Frivolous challenges, and those made for an
11 improper purpose (e.g., to harass or impose unnecessary expenses and
12 burdens on other parties) may expose the Challenging Party to
13 sanctions. Unless the Designating Party has waived or withdrawn the
14 confidentiality designation, all parties shall continue to afford the
15 material in question the level of protection to which it is entitled under
16 the Producing Party's designation until the Court rules on the
17 challenge.

18 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

- 19 A. Basic Principles
- 20 1. A Receiving Party may use Protected Material that is disclosed
21 or produced by another Party or by a Non-Party in connection
22 with this Action only for prosecuting, defending, or attempting
23 to settle this Action. Such Protected Material may be disclosed
24 only to the categories of persons and under the conditions
25 described in this Order. When the Action has been terminated, a
26 Receiving Party must comply with the provisions of Section 14
27 below.

1 2. Protected Material must be stored and maintained by a
2 Receiving Party at a location and in a secure manner that
3 ensures that access is limited to the persons authorized under
4 this Order.

5 B. Disclosure of “CONFIDENTIAL” Information or Items. Unless
6 otherwise ordered by the Court or permitted in writing by the
7 Designating Party, a Receiving Party may disclose any information or
8 item designated “CONFIDENTIAL” only to:

- 9 1. The Receiving Party’s Outside Counsel of Record in this
10 Action, as well as employees of said Outside Counsel of Record
11 to whom it is reasonably necessary to disclose the information
12 for this Action;
- 13 2. The officers, directors, and employees (including House
14 Counsel) of the Receiving Party to whom disclosure is
15 reasonably necessary for this Action;
- 16 3. Experts (as defined in this Order) of the Receiving Party to
17 whom disclosure is reasonably necessary for this Action and
18 who have signed the “Acknowledgment and Agreement to Be
19 Bound” (Exhibit A);
- 20 4. The Court and its personnel;
- 21 5. Court reporters and their staff;
- 22 6. Professional jury or trial consultants, mock jurors, and
23 Professional Vendors to whom disclosure is reasonably
24 necessary for this Action and who have signed the
25 “Acknowledgment and Agreement to be Bound” attached as
26 Exhibit A hereto;

- 1 7. The author or recipient of a document containing the
- 2 information or a custodian or other person who otherwise
- 3 possessed or knew the information;
- 4 8. During their depositions, witnesses, and attorneys for witnesses,
- 5 in the Action to whom disclosure is reasonably necessary
- 6 provided: (i) the deposing party requests that the witness sign
- 7 the “Acknowledgment and Agreement to Be Bound;” and
- 8 (ii) they will not be permitted to keep any confidential
- 9 information unless they sign the “Acknowledgment and
- 10 Agreement to Be Bound,” unless otherwise agreed by the
- 11 Designating Party or ordered by the Court. Pages of transcribed
- 12 deposition testimony or exhibits to depositions that reveal
- 13 Protected Material may be separately bound by the court
- 14 reporter and may not be disclosed to anyone except as permitted
- 15 under this Stipulated Protective Order; and
- 16 9. Any mediator or settlement officer, and their supporting
- 17 personnel, mutually agreed upon by any of the parties engaged
- 18 in settlement discussions.

19 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
20 **PRODUCED IN OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation
22 that compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:

- 24 A. Promptly notify in writing the Designating Party. Such notification
- 25 shall include a copy of the subpoena or court order;
- 26 B. Promptly notify in writing the party who caused the subpoena or order
- 27 to issue in the other litigation that some or all of the material covered
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1 by the subpoena or order is subject to this Protective Order. Such
2 notification shall include a copy of this Stipulated Protective Order;
3 and

4 C. Cooperate with respect to all reasonable procedures sought to be
5 pursued by the Designating Party whose Protected Material may be
6 affected.

7 If the Designating Party timely seeks a protective order, the Party served
8 with the subpoena or court order shall not produce any information designated in
9 this action as “CONFIDENTIAL” before a determination by the Court from which
10 the subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action
14 to disobey a lawful directive from another court.

15 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
16 **PRODUCED IN THIS LITIGATION**

17 The terms of this Order are applicable to information produced by a
18 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 If a Party is required, by a valid discovery request, to produce a Non-Party’s
23 confidential information in its possession, and the Party is subject to an agreement
24 with the Non-Party not to produce the Non-Party’s confidential information, then
25 the Party shall:

- 1 A. Promptly notify in writing the Requesting Party and the Non-Party
- 2 that some or all of the information requested is subject to a
- 3 confidentiality agreement with a Non-Party;
- 4 B. Promptly provide the Non-Party with a copy of the Stipulated
- 5 Protective Order in this Action, the relevant discovery request(s), and
- 6 a reasonably specific description of the information requested; and
- 7 C. Make the information requested available for inspection by the
- 8 Non-Party, if requested.

9 If the Non-Party fails to seek a protective order from this court within 14
10 days of receiving the notice and accompanying information, the Receiving Party
11 may produce the Non-Party's confidential information responsive to the discovery
12 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
13 not produce any information in its possession or control that is subject to the
14 confidentiality agreement with the Non-Party before a determination by the court.
15 Absent a court order to the contrary, the Non-Party shall bear the burden and
16 expense of seeking protection in this court of its Protected Material.

17 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has
19 disclosed Protected Material to any person or in any circumstance not authorized
20 under this Stipulated Protective Order, the Receiving Party must immediately
21 (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use
22 its best efforts to retrieve all unauthorized copies of the Protected Material,
23 (3) inform the person or persons to whom unauthorized disclosures were made of
24 all the terms of this Order, and (4) request such person or persons to execute the
25 "Acknowledgment and Agreement to be Bound" that is attached hereto as
26 Exhibit A.

**12. INADVERTENT PRODUCTION OF PRIVILEGED OR
OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the Stipulated Protective Order submitted to the Court.

13. MISCELLANEOUS

- A. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.
- B. Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.
- C. Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the

1 Court, then the Receiving Party may file the information in the public
2 record unless otherwise instructed by the Court.

3 **14. FINAL DISPOSITION**

4 After the final disposition of this Action, as defined in Section 5, within
5 sixty days of a written request by the Designating Party, each Receiving Party must
6 return all Protected Material to the Producing Party or destroy such material. As
7 used in this subdivision, “all Protected Material” includes all copies, abstracts,
8 compilations, summaries, and any other format reproducing or capturing any of the
9 Protected Material. Whether the Protected Material is returned or destroyed, the
10 Receiving Party must submit a written certification to the Producing Party (and, if
11 not the same person or entity, to the Designating Party) by the 60 day deadline that
12 (1) identifies (by category, where appropriate) all the Protected Material that was
13 returned or destroyed and (2) affirms that the Receiving Party has not retained any
14 copies, abstracts, compilations, summaries or any other format reproducing or
15 capturing any of the Protected Material. Notwithstanding this provision, Counsel
16 are entitled to retain an archival copy of all pleadings, motion papers, trial,
17 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
18 and trial exhibits, expert reports, attorney work product, and consultant and expert
19 work product, even if such materials contain Protected Material. Any such archival
20 copies that contain or constitute Protected Material remain subject to this
21 Protective Order as set forth in Section 5.

22 Any violation of this Order may be punished by all appropriate measures
23 including, without limitation, contempt proceedings, and/or monetary sanctions.
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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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3 Dated: July 31, 2024



Benjamin M. Cutchshaw
SAMINI BLOCK APC
Attorneys for Plaintiff

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8 Dated: July 31, 2024

/s/ Jon Borderud

Jon W. Borderud
**GORDON REES SCULLY
MANSUKHANI, LLP**
Attorneys for Defendant

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12 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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15 Dated: 09/12/2025

/s/ Autumn D. Spaeth
HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____
[full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issue by the United States
District Court for the Central District of California on _____ in the case of
Avisar v. Surgical Theater, et al. (Case No. 8:23-cv-00211-JWH-ADSx). I agree
to comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action. I hereby appoint _____ [full
name] of _____ [full address and telephone number] as my
California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____